§ 3107. Employment of publicity experts; restrictions

Appropriated funds may not be used to pay a publicity expert unless specifically appropriated for that purpose.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 416.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 54.	Oct. 22, 1913, ch. 32, § 1 (last par. under ''Interstate Commerce Commission''), 38 Stat. 212.

The prohibition is restated in positive form.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

§ 3108. Employment of detective agencies; restrictions

An individual employed by the Pinkerton Detective Agency, or similar organization, may not be employed by the Government of the United States or the government of the District of Columbia.

(Pub. L. 89– 554, Sept. 6, 1966, 80 Stat. 416.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 53.	Mar. 3, 1893, ch. 208 (5th par. under ''Public Buildings''), 27 Stat. 591.

The prohibition is restated in positive form.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

§ 3109. Employment of experts and consultants; temporary or intermittent

(a) For the purpose of this section—

(1) ''agency'' has the meaning given it by section 5721 of this title; and

(2) ''appropriation'' includes funds made available by statute under section 9104 of title 31.

(b) When authorized by an appropriation or other statute, the head of an agency may procure by contract the temporary (not in excess of 1 year) or intermittent services of experts or consultants or an organization thereof, including stenographic reporting services. Services procured under this section are without regard to—

(1) the provisions of this title governing appointment in the competitive service;

(2) chapter 51 and subchapter III of chapter 53 of this title; and

(3) section 6101(b) to (d) of title 41, except in the case of stenographic reporting services by an organization.

However, an agency subject to chapter 51 and subchapter III of chapter 53 of this title may pay a rate for services under this section in excess of the daily equivalent of the highest rate payable under section 5332 of this title only when specifically authorized by the appropriation or other statute authorizing the procurement of the services.

(c) Positions in the Senior Executive Service or the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service may not be filled under the authority of subsection (b) of this section.

(d) The Office of Personnel Management shall prescribe regulations necessary for the administration of this section. Such regulations shall include—

(1) criteria governing the circumstances in which it is appropriate to employ an expert or consultant under the provisions of this section;

(2) criteria for setting the pay of experts and consultants under this section; and

(3) provisions to ensure compliance with such regulations.

(e) Each agency shall report to the Office of Personnel Management on an annual basis with respect to—

(1) the number of days each expert or consultant employed by the agency during the period was so employed; and

(2) the total amount paid by the agency to each expert and consultant for such work during the period.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 416; Pub. L. 95–454, title IV, § 402(b), Oct. 13, 1978, 92 Stat. 1160; Pub. L. 97–258, § 3(a)(4), Sept. 13, 1982, 96 Stat. 1063; Pub. L. 100–325, § 2(b), May 30, 1988, 102 Stat. 581; Pub. L. 102–378, § 2(8), Oct. 2, 1992, 106 Stat. 1347; Pub. L. 111–350, § 5(a)(4), Jan. 4, 2011, 124 Stat. 3841.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 55a.	Aug. 2, 1946, ch. 744, § 15, 60 Stat. 810.

In subsection (a), the definitions of ''agency'' and ''appropriation'' are added on authority of the Act of Aug. 2, 1946, ch. 744, § 18, 60 Stat. 811.

In subsection (b), the words ''the provisions of this title governing appointment in the competitive service'' are substituted for ''the civil-service laws''. The words ''chapter 51 and subchapter III of chapter 53 of this title'' are substituted for the reference to the classification laws which originally meant the Classification Act of 1923, as amended. Exception from the Classification Act of 1949 is based on sections 202(27) and 1106(a) of the Act of Oct. 28, 1949, ch. 782, 63 Stat. 956, 972.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

2011—Subsec. (b)(3). Pub. L. 111–350 substituted ''section 6101(b) to (d) of title 41'' for ''section 5 of title 41''.

1992—Subsecs. (d), (e). Pub. L. 102–378 added subsecs. (d) and (e).

1988—Subsec. (c). Pub. L. 100–325 inserted reference to Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service.

1982—Subsec. (a)(2). Pub. L. 97–258 substituted ''section 9104'' for ''section 849''.

1978—Subsec. (c). Pub. L. 95–454 added subsec. (c).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 9 months after Oct. 13, 1978, and congressional review of provisions of

sections 401 through 412 of Pub. L. 95–454, see section 415 of Pub. L. 95–454, set out as an Effective Date note under section 3131 of this title.

APPROPRIATIONS RELATING TO LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION; PUBLIC DISCLOSURE OF CONSULTING SERVICE THROUGH PROCUREMENT CONTRACT

Pub. L. 102–394, title V, § 501, Oct. 6, 1992, 106 Stat. 1825, provided that: ''The expenditure of any appropriation under this Act or subsequent Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Acts for any consulting service through procurement contract, pursuant to 5 U.S.C. 3109, shall be limited to those contracts where such expenditures are a matter of public record and available for public inspection, except where otherwise provided under existing law, or under existing Executive order issued pursuant to existing law.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 102–170, title V, § 501, Nov. 26, 1991, 105 Stat. 1140.

Pub. L. 101–517, title V, § 501, Nov. 5, 1990, 104 Stat. 2220.

Pub. L. 101–166, title V, § 501, Nov. 21, 1989, 103 Stat. 1189.

Pub. L. 100–202, § 101(h) [title V, § 501], Dec. 22, 1987, 101 Stat. 1329–256, 1329–287.

Pub. L. 99–500, § 101(i) [H.R. 5233, title V, § 501], Oct. 18, 1986, 100 Stat. 1783–287, and Pub. L. 99–591, § 101(i) [H.R. 5233, title V, § 501], Oct. 30, 1986, 100 Stat. 3341–287.

Pub. L. 99–178, title V, § 501, Dec. 12, 1985, 99 Stat. 1132.

Pub. L. 98–619, title V, § 501, Nov. 8, 1984, 98 Stat. 3332.

Pub. L. 98–139, title V, § 501, Oct. 31, 1983, 97 Stat. 898.

Pub. L. 97–377, title I, § 101(e)(1) [title V, § 501], Dec. 21, 1982, 96 Stat. 1878, 1904.

AVAILABILITY OF APPROPRIATIONS FOR SERVICES

Pub. L. 102–394, title V, § 503, Oct. 6, 1992, 106 Stat. 1825, provided that: ''Appropriations contained in this Act or subsequent Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Acts, available for salaries and expenses, shall be available for services as authorized by 5 U.S.C. 3109 but at rates for individuals not to exceed the per diem rate equivalent to the maximum rate payable for senior-level positions under 5 U.S.C. 5376.''

[For reference to maximum rate under section 5376 of this title, see section 2(d)(3) of Pub. L. 110–372, set out as an Effective Date of 2008 Amendment note under section 5376 of this title.]

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 102–170, title V, § 503, Nov. 26, 1991, 105 Stat. 1140.

Pub. L. 101–517, title V, § 503, Nov. 5, 1990, 104 Stat. 2221.

Pub. L. 101–166, title V, § 503, Nov. 21, 1989, 103 Stat. 1189.

Pub. L. 100–202, § 101(h) [title V, § 503], Dec. 22, 1987, 101 Stat. 1329–256, 1329–287.

Pub. L. 99–500, § 101(i) [H.R. 5233, title V, § 503], Oct. 18, 1986, 100 Stat. 1783–287, and Pub. L. 99–591, § 101(i) [H.R. 5233, title V, § 503], Oct. 30, 1986, 100 Stat. 3341–287.

Pub. L. 99–178, title V, § 503, Dec. 12, 1985, 99 Stat. 1132.

Pub. L. 98–619, title V, § 503, Nov. 8, 1984, 98 Stat. 3333.

Pub. L. 98–139, title V, § 503, Oct. 31, 1983, 97 Stat. 899.

Pub. L. 97–377, title I, § 101(e)(1) [title V, § 503], Dec. 21, 1982, 96 Stat. 1878, 1904.

APPROPRIATIONS RELATING TO ENERGY AND WATER DEVELOPMENT; PUBLIC DISCLOSURE OF CONSULTING SERVICE THROUGH PROCUREMENT CONTRACT

Pub. L. 102–377, title V, § 504, Oct. 2, 1992, 106 Stat. 1342, provided that: ''The expenditure of any appropriation under this Act or subsequent Energy and Water Development Appropriations Acts for any consulting service through procurement contract, pursuant to section 3109 of title 5, United States Code, hereafter shall be limited to those contracts where such expenditures are a matter of public record and available for public inspection, except where otherwise provided under existing law, or under existing Executive Order issued pursuant to existing law.''

EX. ORD. NO. 13433. PROTECTING AMERICAN TAXPAYERS FROM PAYMENT OF CONTINGENCY FEES

Ex. Ord. No. 13433, May 16, 2007, 72 F.R. 28441, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, it is hereby ordered as follows:

SECTION 1. *Policy*. To help ensure the integrity and effective supervision of the legal and expert witness services provided to or on behalf of the United States, it is the policy of the United States that organizations or individuals that provide such services to or on behalf of the United States shall be compensated in amounts that are reasonable, not contingent upon the outcome of litigation or other proceedings, and established according to criteria set in advance of performance of the services, except when otherwise required by law.

SEC. 2. *Duties of Agency Heads*. (a) Heads of agencies shall implement within their respective agencies the policy set forth in section 1, consistent with such instructions as the Attorney General may prescribe.

(b) After the date of this order, no agency shall enter into a contingency fee agreement for legal or expert witness services addressed by section 1 of this order, unless the Attorney General has determined that the agency's entry into the agreement is required by law.

(c) Within 90 days after the date of this order, the head of each agency shall notify the Attorney General and the Director of the Office of Management and Budget of any contingency fee agreements for services addressed by section 1 of this order that are in effect as of the date of this order.

SEC. 3. *Definitions*. For purposes of this order:

(a) The term ''agency'' means an executive agency as defined in section 105 of title 5, United States Code, and the United States Postal Service and the Postal Regulatory Commission, but shall exclude the Government Accountability Office and elements of the intelligence community (as defined in section 3(4) of the National Security Act of 1947 as amended (50 U.S.C. 401a(4))[)].

(b) The term ''contingency fee agreement'' means a contract or other agreement to provide services under which the amount or the payment of the fee for the services is contingent in whole or in part on the outcome of the matter for which the services were obtained. The term does not include:

(i) qualified tax collection contracts defined in section 6306 of title 26, United States Code, and

(ii) contracts described in sections 3711 and 3718 of title 31, United States Code.

SEC. 4. *General Provisions*. (a) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(b) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law to an agency or the head thereof; or

(ii) functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative proposals.

(c) This order is not intended to, and does not, create any right, benefit, or privilege, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, instrumentalities, or entities, its officers or employees, or any other person.

GEORGE W. BUSH.

§ 3110. Employment of relatives; restrictions

(a) For the purpose of this section—

(1) ''agency'' means—